



August 18, 2005

Western Washington Municipal SW Comment
Attn: Bill Moore

WA Department of Ecology
Water Quality Program
PO Box 47600
Olympia, WA 98504-7600

PUBLIC WORKS
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Public Works Director

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RE: National Pollutant Discharge Elimination System (NPDES) Phase II
Draft Permit

Dear Mr. Moore,

We are sending you this letter to express our views and concerns regarding the NPDES Phase II First Preliminary Draft Permit. We would like to express our gratitude in considering our comments a vital part of the decision making process. After reviewing this permit, it is apparent that Ecology staff expended a considerable amount of effort in drafting it. However, some permit requirements are in need of further attention and adjustment. Our comments regarding these issues will be further expanded upon in the attached pages.

Some of the City's general concerns regarding this permit are the following:

- **Timeframes** - The permit requires the adoption of several ordinances, programs, and enforcement actions in a timeframe that is unrealistic for many municipalities to comply. The schedules cited in the permit need to comply with schedules and legal processes of municipal governments. Simplifying the compliance schedule is critical; having many different enforcement dates may lead to permit failure. Furthermore, an extension to the compliance schedule should be allowed and provided for in the permit at request of the permittee following review by Ecology.
- **Monitoring** – The permit requirements should focus on the effectiveness of implementation of the Stormwater Management Plan (SWMP) and should not exceed Federal CFR requirements. Monitoring should focus on the function of an MS4 system rather than receiving water bodies or sources outside the MS4 system. A number of potential pollution sources from non-point sources that enter a municipal system are beyond the ability of municipalities to control. The amount of water quality data required to gauge an MS4's program success will be difficult to impossible to collect. Monitoring programs should focus on the effectiveness of Permittees programs, using all known and reasonable technologies (AKART), to handle water quality issues to the maximum extent practical (MEP). Best Management Practices (BMP) effectiveness

monitoring should be conducted at a regional or state level rather than at the permittee level.

- **Stormwater manual** – The Stormwater Management Manual for Western Washington (SMMWW) is not a regulatory instrument. It has not been through a regulatory process and its use should not be mandated through permit issuance. Ecology must ensure that wherever the permittee is directed to the Western Washington Stormwater Manual that the language include only the mandatory sections of the manual and are not required to adopt the manual by reference alone. All citations of the Western Washington Stormwater Manual must include the ability to use equivalent manuals.
- **Pre-development forested conditions** – The permit requires the usage of pre-development forested conditions in mitigating stormwater flows. Existing conditions of urbanized and developed areas make this requirement unattainable. This requirement would severely discourage redevelopment and revitalization that could result in environmental improvements, particularly on sites that do not have existing stormwater flow control or treatment facilities.
- **Co-Permittees & Secondary Permittees** – Additional information is needed on when a small MS4 within your boundaries becomes a secondary permittee and what will be required. To coordinate, manage and oversee multiple Secondary Permittees will require additional administrative effort on the primary permittee.

- **Appendices**

Three appendices have not yet been published and are not available for review or comment. These are Appendix VI – Annual Report Form; Appendix VII – Application Form and Notice of Intent; and, Appendix VIII – Summary of Implementation of Schedule.

Based on comments made at public meetings, the city has concerns that the Department of Ecology does not have the staffing in place to properly support this permit program. The usefulness of the permit will decrease and the legal exposure may increase as a result of this lack of support. Adequate support from Ecology will be direly needed.

Thank you again for the opportunity to comment on this important permit. Please contact Jefferson Davis at 253-856-5584 with any questions you may have.

Sincerely,



Larry R. Blanchard
Public Works Director

Attachment

Copy: Gary Gill, City Engineer

Michael Mactutis, Environmental Engineering Manager
Jefferson Davis, Environmental Engineer II

City of Kent
NPDES Phase II
Detailed Comments

Special Condition 1: Permit Coverage Area and Criteria

D.2.a. "All other regulated small MS4s shall apply either as a Secondary Permittee or as a Co-permittee with a City or County."

Additional information is needed on when a small MS4 within your boundaries becomes a secondary permittee. Will the small MS4 become our secondary permittee automatically without an agency's knowledge or input? To coordinate, manage and oversee multiple Secondary Permittees will require additional administrative effort on the primary permittee.

Special Condition 2: Authorized Discharges

C. "This permit authorizes discharges from fire fighting activities, except training exercises, unless the discharges from fire fighting activities are identified as significant sources of pollutants to waters of the State."

Fire fighting activities should be excluded from the permit requirements. Fire fighters primary concern is the protection of human life. Requiring the monitoring of stormwater discharges during fire fighting will hinder their ability to conduct emergency procedures and could result in additional fire damages which can lead to additional pollutants being released into natural resources. Any types of fire fighting activities which would be significant sources of pollutants should be identified.

Special Condition 5: Compliance With Standards

This permit is based on the presumptive approach of using Best Management Practices (BMP'S) to the maximum extent practicable (MEP) and using all Known and Reasonable Technologies (AKART). This section is targeting direct discharges instead of the operation and maintenance of the entire system.

B. "To meet the requirement to reduce the discharge of pollutants to the MEP, each Permittee shall comply with the requirements of this permit."

The permit should reinforce the relationship between meeting all the terms and conditions of the permit and meeting MEP requirements. The City has heard several times in public meetings with DOE that if an agency complies with the permit, it is meeting MEP. The permit should include verbiage that directly reinforces this principle.

Special Condition 6: Monitoring

"Ecology is requesting comments on the objectives of the proposed monitoring program. We are interested in assessing the effect of implementing the stormwater management programs required under this permit. This includes looking at receiving waters, stormwater quality and BMP effectiveness. The information gained will be used to provide

feedback for local stormwater management programs and Ecology's permitting program. Should Ecology require integrated, collaborative, WRIA-scale monitoring programs? WRIA scale monitoring programs could eventually integrate monitoring among all municipal stormwater Permittees, Phase I, Phase II and WSDOT. Or are independent monitoring programs adequate to develop the information basis for providing feedback on stormwater management programs?"

The City believes there are benefits to come from conducting water quality monitoring. However, the City also understands the costs associated with conducting these types of monitoring programs are huge. The City likes the flexibility that the permit seems to offer in developing and proposing a monitoring program that would directly benefit our jurisdiction and assist in our environmental decision making. At this time the City disagrees with a requirement to participate in a large scale monitoring program. However, the city agrees that it is important to share data with others as well as help jurisdictional neighbors as needed and we are willing to report our data to DOE so you can derive a report. However, the City's opinion is that the focus should be localized, and the knowledge and information can be put to the best use at that level.

It is not appropriate to require monitoring for BMP effectiveness. A significant amount of research has gone into developing and monitoring these BMP's prior to including them in the Stormwater Management Manual for Western Washington. It should be left up to the local jurisdictions to determine what type of monitoring they feel is necessary to conduct based on localized water quality issues. This monitoring requirement can bankrupt a stormwater system and can take away funds from system maintenance and improvement.

A1. "Is the Stormwater Management Program required in S7 adequate to prevent adverse impacts to receiving water quality and beneficial uses from new development construction and post-construction stormwater discharges?"

To answer this question requires a before and after study along with additional areas as controls which represent current development and predevelopment. If you are meeting the AKART, MEP and BMP requirements, the answer should be yes.

A2. "Is the Permittee's Stormwater Management Program preventing impacts to water quality and beneficial uses in receiving waters? The water quality monitoring program must include long-term monitoring and may include short-term special studies. The monitoring program shall also include BMP effectiveness monitoring. The results of the monitoring program shall be used to support the adaptive management process and lead to refinements of the Stormwater Management Program."

Monitoring receiving waters is outside of local control. BMP effectiveness monitoring as it relates to receiving waters is outside of many agencies' local control and capabilities. Small jurisdictions cannot afford to conduct a watershed analysis to prove or disprove BMP effectiveness.

Special Condition 7: Stormwater Management Program

We have heard comments in a public meeting held by DOE that they will not be reviewing nor approving any SWMP and that they will simply be shelved. DOE will randomly select MS4's for audits. This is unacceptable. If program implementation is not reviewed except under an audit

then a related question would be whether monitoring programs will be reviewed either. Monitoring programs will be directly linked to and dependent on the SWMP. The City cannot develop the required programs and reports without review or feedback. MS4's must have guidance on how to complete a SWMP and must have an approval process. Otherwise, MS4's would be unable to judge whether they are implementing programs in accordance with the permit requirements. With no approval of these documents, the permit may not offer sufficient legal protection. Permit fees should fund staff dedicated to reviewing and approving SWMP's.

A.4. "The SWMP shall include an ongoing program for gathering, maintaining, and using information to track SWMP development and implementation, evaluate permit compliance/non-compliance, and to determine the effectiveness of the SWMP implementation."

The evaluation of compliance and noncompliance should be DOE's responsibility rather than the permittees'.

C.3.c.iv. - Illicit Discharge Detection and Elimination

There needs to be additional clarification regarding the spill program that is required in this section. Historically, spills and releases to the environment are issues that Ecology has been mandated to address. This program could have very high costs which could vary significantly year to year. Staff would have to be specially trained in these areas. If the cleanup and disposal costs were solely the responsibility of the local jurisdiction, without help from Ecology, one hazardous waste spill could deplete the entire municipal spill budget.

Permit Deadlines

There are a number of different deadlines within this program and meeting these deadlines may be problematic for many municipalities. The deadlines are the following: 4 yrs fully implement IDDE program, 4 yrs for MS4 mapping, 2 yrs for the adoption of ordinances (to prohibit non-stormwater, illegal discharges, and dumping to the MS4 system), 3 yrs screening for illicit connections, 2 yrs procedures for reporting and removing illicit connections, 2 yrs procedures for spill cleanup and response, 2 yrs line for citizen complaints, 1 yr training staff to identify spills and illicit discharges, annual inspections of flow control and treatment stormwater facilities, and 2 years for training for id and reporting illicit discharges or connections. This is an overwhelming amount of procedures to implement within the permit period, and this list does not include other duties and deadlines outlined in other special conditions throughout the permit.